

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# ORIGINAL

## 74-1750

### United States Court of Appeals

For the Second Circuit.

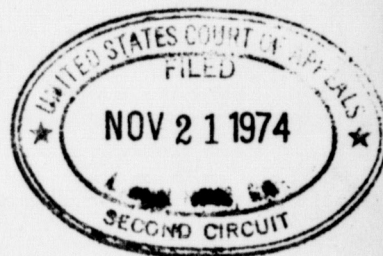
SECURITIES AND EXCHANGE COMMISSION,  
Plaintiff-Appellee,

-against-

NORTH AMERICAN RESEARCH AND DEVELOPMENT  
CORP., EDWARD WHITE and ALFRED BLUMBERG,  
Defendants-Appellants.

*On Appeal From A Judgment Of The United States  
District Court For The Southern District Of New York*

#### JOINT APPENDIX



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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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SECURITIES AND EXCHANGE COMMISSION

Plaintiff-Appellee

-against-

NORTH AMERICAN RESEARCH AND  
DEVELOPMENT CORP., EDWARD WHITE  
and ALFRED BLUMBERG

Defendants-Appellants

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Relevant Docket Entries

Date

Nov. 15, 1967	Filed Notice of Motion re: Consolidate Motions. Ret. 11/21/67, together with affidavit in support.
Nov. 15, 1967	Filed memo endorsed on unsigned show cause order. "Application for this order to show cause is denied. If moving defts. seek the relief mentioned in para. "10" of the annexed affdvt., they may apply for it on the return date of the notice of motion heretofore served by the Commis- sion. So ordered,"-Ryan, J.--mailed notice.
Mar. 8, 1974	Filed OPINION #40436--****Permanent injunctive relief is essential to protect the public against these and other illegal acts and transactions of White, North American, Blumberg and Bowman with respect to the securities of North American or any other securities in the future. Unless so enjoined, there is reasonable likelihood that these defts.

might continue to engage in violations of the securities laws. Judgment may be entered accordingly. Weinfeld, J. m/n

- Mar. 26, 1974 Filed Final order and JUDGMENT of permanent injunction against defts. NORTH AMERICAN RESEARCH AND DEVELOPMENT CORP., EDWARD WHITE, K. RALPH BOWMAN AND ALFRED BLUMBERG ONLY. Weinfeld, J. m/n  
Judgment Entered, Clerk entered on docket 3/27/74
- May 23, 1974 Filed defts. North American Research and Dev. Corp., and Edward White notice of appeal to the USCA from the final order and judgment of permanent injunction signed on March 25, 1974 and entered on March 26, 1974 from each and every part of the said order and judgment. (copies mailed).
- May 24, 1974 Filed deft. Alfred Blumberg notice of appeal to the USCA from the final order and judgment of permanent injunction signed by J. Weinfeld on March 25, 1974 and entered on March 26, 1974 and from each and every part of said order and judgment. (copies mailed).

NOTICE OF APPEAL

Notice is hereby given that NORTH AMERICAN RE-  
SEARCH AND DEVELOPMENT CORP. and EDWARD WHITE, defendants  
above named, hereby appeal to the United States Court of  
Appeals for the Second Circuit, from the Final Order and  
Judgment of Permanent Injunction, signed by Hon. Edward  
Weinfeld on March 25, 1974 and entered in this action on  
March 26, 1974, and from each and every part of said Order  
and Judgment.

Dated: New York, N.Y.  
May 30, 1974

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TO: WILLIAM D. MORAN, ESQ.  
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ORDER APPEALED FROM

Upon the complaint filed in this action on September 27, 1967, upon argument and evidence presented by the plaintiff and defendants, upon the Opinion, Findings of Fact and Conclusions of Law of United States District Judge Edward Weinfeld filed March 8, 1974, and upon all other papers and proceedings herein, and the Court having considered the matter and being duly advised, and there being no just reason for delay in issuing this Judgment, it is hereby

ORDERED, ADJUDGED AND DECREED that the defendants North American Research and Development Corporation, Edward White ("White"), K. Ralph Bowman ("Bowman"), and Alfred Blumberg ("Blumberg"), their agents, servants, employees, attorneys and those in active concert or participation with them, and each of them, be and hereby are permanently enjoined from directly and indirectly, singly and in concert, in the absence of applicable statutory exemptions:

- (1) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell through the use or medium of any prospectus or otherwise or to carry or cause to be carried any securities of North American Research and Development Corp.

or any other securities, unless and until a registration statement is filed with the Securities and Exchange Commission as to such securities;

- (2) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell securities of North American Research and Development Corp. or any other securities through the use or medium of any prospectus or otherwise, unless and until a registration statement is in effect with the Securities and Exchange Commission as to such securities;
- (3) Carrying securities of North American Research and Development Corp. or any other securities or causing them to be carried through the mails or in interstate commerce by any means or instruments of transportation for the purpose of sale or delivery after sale, unless and until a registration statement is in effect with the Securities and Exchange Commission as to such securities; and it is further

ORDERED, ADJUDGED AND DECREED that the defendants North American Research and Development Corporation, White,



Bowman and Blumberg, their agents, servants, employees, attorneys, and those in active concert or participation with them, and each of the, be and hereby are permanently enjoined from directly and indirectly, singly and in concert: Employing any device, scheme or artifice to defraud, engaging in any acts, practices or courses of business which operate or would operate as a fraud and deceit upon purchasers and prospective purchasers, making any untrue statements of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading in connection with the purchase, offer or sale of securities of North American Research and Development Corporation or any other securities while making use of any means or instrumentality of interstate commerce or of the mails, or of any means or instrument of transportation or communication in interstate commerce.

Dated: New York, New York  
March 25, 1974

Edward Weinfeld  
UNITED STATES DISTRICT JUDGE

JUDGMENT ENTERED: 3/26/74

Raymond F. Burghardt  
CLERK

OPINION OF JUDGE WEINFELD

EDWARD WEINFELD, D. J.

This action was commenced in September 1967 by the Securities and Exchange Commission (SEC) against North American Research and Development Corporation (North American) and forty-two other defendants for a permanent injunction against continued violations of the registration (1) and anti-fraud provisions of the Securities Act of 1933 (2) and the Securities Exchange Act of 1934 (3) and the rules and regulations thereunder. (4) In essence, the defendants were charged, singly and in concert, with selling blocks of unregistered North American stock and with fraudulent conduct in the sale of the stock. As the case progressed from the commencement of suit, when plaintiff applied for preliminary injunctive relief, through an appeal and remand as to some defendants, permanent injunctions or other dispositions were entered as to all defendants except North American, Edward White, its chief executive officer,

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(1) Sections 5(a) and 5(c), 15 U.S.C. §§ 77e(a), (c) (1970).

(2) Section 17(a), 15 U.S.C. § 77q(a) (1970).

(3) Section 10(b), 15 U.S.C. § 78j(b) (1970).

(4) Rule 10b-5, 17 C.F.R. 240.10b-5 (1973).



K. Ralph Bowman, its secretary-treasurer, and Alfred Blumberg, a stock broker who was president of an inactive brokerage firm and who had been engaged in various aspects of the securities business. As to the latter four, preliminary injunctive relief was in effect pending a trial on the merits. (5)

Plaintiff's motion for preliminary injunctive relief was based upon extensive affidavits and testimony taken before then District Judge Walter R. Mansfield. The hearing extended over seven days in January 1968, during which twenty-four witnesses, including the defendants White, Bowman and Blumberg testified. Thereafter, in February 1968, Judge Mansfield rendered a decision and made extensive findings and conclusions of law to the effect that plaintiff had established a strong prima facie case. (6)

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(5) Thirty-four defendants were permanently enjoined, twenty-one by consent and thirteen by default. The action was discontinued against three defendants who stipulated to comply with the acts and rules, and upon their undertakings such an order was entered. The complaint was dismissed as to one defendant because of death, and one defendant, a Canadian citizen, was never served with process.

(6) SEC v. North American Research & Dev. Corp., 230 F. Supp. 106 (S.D.N.Y. 1968).

Preliminary injunctive relief was granted against most defendants, including North American, White and Bowman; it was denied as to seven defendants, including Blumberg. Upon cross-appeals the order was upheld except insofar as it denied injunctive relief against Blumberg and others, (7) and accordingly was remanded for further proceedings. Upon remand, although afforded the opportunity to introduce additional evidence, Blumberg, as well as the others, elected to stand on the existing record. After hearing oral argument, Judge Mansfield found that Blumberg had violated the registration and anti-fraud provisions of the securities acts in the sale and distribution of North American stocks, and granted a preliminary injunction against him. In September 1972, Judge Motley granted summary judgment against the corporation, North American and Bowman, finding that each had violated the registration and anti-fraud provisions of the securities acts as alleged in the complaint, but reserved for trial the scope of injunctive relief, if any, to be issued against them. Thus, the unresolved issues now before the court are on plaintiff's application for final judgment against White

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(7) 424 F.2d 63 (2d Cir. 1970).



and Blumberg, and if plaintiff sustains its burden of proof, the scope of the relief to be granted against  
(8)  
them, North American and Bowman.

The key figure in the affairs of North American was the defendant Edward White, who conceived a scheme to acquire a worthless corporate shell through control of the issued stock of an inactive publicly-held corporation, North American, formerly Utah Fortuna Gold Company. White and the other defendants were charged with promoting distribution of the balance of the issued stock with a view of introducing it onto the over-the-counter market in the United States, creating a demand for it, instigating the trading of it, and running up its market price, all for the benefit of himself and a group working with him in the distribution of the stock. A thumbnail sketch of the scheme is succinctly set forth by Judge Mansfield:

"On April 27, 1967 White acquired control of such a worthless corporate shell, a Utah company called Utah Fortuna

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(8) When the case was called for trial, Bowman's counsel stated that Bowman would consent to a final judgment of permanent injunction. The court has since been advised that thus far he has not signed the consent to the permanent injunction.

Gold Company, the name of which was later changed by him to North American. Although no market for its stock had existed for years, within three months, as the result of a carefully laid and executed plan of the White-Freeman-Naft trio, approximately 200,000 shares of its stock was distributed via Canadian accounts to broker-dealers and the public in the United States, trading of the stock was initiated on the over-the-counter market, and the price of the stock, as a result of the group's skillful promotion, was run up during the same short period from 1/2 cent per share over-the-counter to more than \$6.00 per share, or more than 1200%, even though the corporation did not carry on any commercial operations during the period and its assets were of doubtful value. On July 20, 1967, the bubble burst when trading in the shares was suspended by the SEC."<sup>(9)</sup>

The fraud charge centered about a "Progress Report" of North American and oral statements and representations made by individual defendants to dealers and investors. The charge was that the "Progress Report" omitted any financial information and was false and misleading in various other respects, including its portrayal of men working at the North American plant, which gave the impression that it was currently in operation in July 1967, when in fact the plant had not been operating or in produc-

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(9) SEE v. North American Research & Dev. Corp., 280 F. Supp. 101, 112 (S.D.N.Y. 1969).



tion since 1964. The report was distributed to various stock brokers and investors in the United States and was one of the principal methods used to sell and distribute in the United States shares of North American.

Plaintiff at the trial, pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure, relied in large measure upon the substantial testimony of the twenty-four witnesses who testified and the numerous exhibits admitted in evidence during the seven-day hearing before Judge Mansfield on the motion for preliminary injunctive relief. This court has read and studied the voluminous transcript of that hearing. Plaintiff, in addition to the admissible evidence of the prior proceeding, called at this trial as witnesses defendants Blumberg and White, each of whom, as already noted, testified at the hearing on the motion for preliminary injunctions, at which they were represented by their respective counsel. (10)

Judge Mansfield's decision was based, as he noted, not only upon the affidavits submitted by the parties, but upon his

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(10) The defense at this trial was, of course, free to call any witness or offer any additional evidence, but failed to do so.

(11)

"observance and careful appraisal of the witnesses" who testified before him with respect to disputed fact issues. This court, too, has had the opportunity to observe the demeanor of the two defendants White and Blumberg. Each impressed this court as evasive and at times non-responsive, with a quick and glib explanation for questioned conduct. The printed record of the proceedings before Judge Mansfield also demonstrates in instance after instance evasiveness on the part of these witnesses and a lack of forthrightness in response to questions. Upon the entire record I find the plaintiff has fully sustained its burden of proof that the defendants White, Blumberg and Bowman each violated, and participated in the violation by other defendants of, the registration and anti-fraud provisions of the securities acts, as alleged in the complaint. Plaintiff accordingly is entitled to judgment on the merits.

There remains the issue of the scope of relief. Plaintiff seeks to enjoin the defendants not only against continued violations as to North American securities, but

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(11) SEC v. North American Research & Dev. Corp., 280 F. Supp. 107, 111 (S.D.N.Y. 1968).



also as to any other security. The defendants oppose any injunctive relief (1) upon a claim that since the SEC suspended trading with respect to North American stock in 1967 no sales have occurred, and (2) that as to other securities there is no showing defendants are likely to engage in illegal activities.

As to the North American stock, which remains unregistered to this date, the record establishes such deliberata conduct in its sale and distribution, in violation of sections 5(a) and 5(c) of the Securities Act of (12)) 1933, that there can be no serious question that plaintiff is entitled to the injunctive relief it seeks.

As to other securities, the defendants' past actions and their pervasive conduct with respect to North American, which furnishes a clue to their general attitudes, justify such relief. The defendant Blumberg's violations were not isolated. He made fraudulent statements to a number of persons in the sale of the stock; he was active, in concert with other defendants, in promoting the sale of stock. Blumberg, in addition to acting as a conduit in the

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(12) 15 U.S.C. §§ 77e(a), (c) (1970).

sale of shares, distributed copies of the "Progress Report."

Similarly, Bowman was deeply involved as secretary-treasurer in the illicit distribution of the stock. He was instrumental in locating the shell corporation, and from the start was in on the scheme involving North American and worked closely with White and others. He played a major role in the preparation of the false and misleading Progress Report. Bowman, with respect to other securities, had previously been enjoined from violating sections 5 and 17 of the Securities Act of 1933.

As to White, a self-styled promoter, principally of mining stocks, and a securities trader, he was the central figure, if not the master mind, of North American's illicit activities. He has engaged extensively in the promotion of other securities. He was chief executive of a Canadian securities underwriting corporation, whose license was revoked by the Canadian authorities. White continues to maintain a stubborn, even defiant attitude that the North American securities are exempt under section 3(a)(1) of the 1933 Act and also as to the probity of the Progress



Report, despite express determinations by the Court of Appeals to the contrary -- an attitude that hardly betokens likelihood of compliance with the securities laws.

Each defendant was an active participant with one or more of the other defendants who have heretofore been permanently enjoined from violations of the securities acts with respect to any security; no good reason appears why in the light of their activities the scope of the injunction issued against the current defendants should be less onerous than that imposed upon the codefendants. Nothing in the record as to the current defendants suggests recognition of the wrongfulness of past illicit conduct or offers the promise of future compliance with the securities laws. Under the circumstances, a permanent injunction against future violations of the securities acts is justified. (13)

The foregoing, together with the following, shall constitute the Court's Findings of Fact and Conclusions of Law:

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(13) CE. LLC v. Manor Nursing Centers, Inc., 458 F.2d 1062, 1100 (2d Cir. 1972).

## FINDINGS OF FACT

### Acquisition of Control by White

1. The defendant White, who had been an active promoter of mining stocks of companies controlled by him, manifested in March 1967 an interest in acquiring control of a corporate shell as the first step in a scheme already referred to, whereby he and others then promoted the sale of stock previously acquired, created a demand for it, and unloaded a substantial portion of their shares upon the purchasing public at greatly inflated prices by fraudulent and manipulative means. Actively associated with him in this scheme from the outset were Sam Freeman, a friend and a Toronto broker, and the defendant K. Ralph Bowman, through whose efforts the Utah Fortuna Gold Company, the empty corporate shell, was located.

2. All but 600,000 shares of the 1,800,000 shares of this inactive company, which White admitted was "virtually worthless," were held by South Utah Mines. Robert A. Johnson, in March 1967, was an officer and director of both companies, as well as the transfer agent of Utah Fortuna Gold Company; he also exercised the



"managerial and financial decisions" of Mrs. Mabel McGarry, who was the owner of approximately 75% of South Utah Mines.

3. Johnson, in the latter part of March 1967, after obtaining authority from Mrs. McGarry to sell the 1,200,000 Utah Fortuna Gold Company shares held by South Utah, agreed to sell the control stock to Whitney, and through him to those whom Whitney represented; on April 27 the sale to Whitney was effected; Whitney immediately resold 1,000,000 shares to White and his nominee, Sonia Starr; as prearranged with Johnson, he also transferred 100,000 shares to his (Whitney's) brother and another 100,000 shares to one Glenn, as finders' fees.

#### Acquisition of Publicly-Distributed Shares

4. It was arranged between Freeman, White and Bowman that any additional shares (beyond those acquired by White) would be purchased by the Toronto brokerage firms of J. P. Cannon & Co. (Cannon) and Lars Hagglof & Co., Ltd. (Hagglof). Whitney's brother and Glenn, upon receipt of the finders' fees shares, sold them to Cannon in Toronto. At the same time, Freeman and Frank Naft,

who were White's principal associates, instructed Cannon to purchase shares to be offered from Salt Lake City for the accounts of their wives and Freeman's mother-in-law. Subsequent instructions provided for purchases in the names of friends and other relatives.

5. Thereafter, during the period from April 24 to June 6, 1967, through the activities of Bowman, Whitney and Johnson, 553,000 additional shares of Utah Fortuna Gold Company (later North American) were acquired from former stockholders, which shares, together with the 200,000 finders' fees shares, making a total of 753,000, were sold to Cannon and Hagglof as instructed by White, Freeman and Naft.

By June 27, 1967, approximately 96.8% of the 1.8 million shares of the company outstanding was under control of the White-Freeman-Naft trio, including the one million shares held by White and his nominee Sonia Starr, and 753,000 shares acquired through Cannon and Hagglof held in the names of close friends and relatives of the trio. The methods and means of acquisition and the relationship between the White-Freeman-Naft trio and the parties in whose names the stock was held in



Toronto indicate that the 753,000 shares were acquired in Toronto with a view to the distribution of all or a very substantial portion of it in the United States.

#### Promotion and Distribution

6. White and his associates took steps to effect a successful redistribution of the shares in the United States. Originally he had planned to transfer some Canadian mining claims to the corporation and then to promote trading in the company's stock; however, when in Salt Lake City in April 1967 to further his purchase of control of Utah Fortuna Gold Company's outstanding stock, a new and more attractive basis for promotion of the stock presented itself.

#### The Storm Process

7. Bowman, who, as noted above, was a key figure in the acquisition of shares from former stockholders, was the president and controlling stockholder of Thermal Dynamics Corporation (Thermal); Whitney, his partner in the acquisitions, was its secretary.

8. Thermal owned rights to a method by which allegedly pollution-free coke might be produced commercially, called the Storrs Process, and owned an inoperative pilot plant that had been built to test production under the process. White decided to use the Storrs Process as the basis for promoting the sale of Utah Fortuna Gold Company stock. To further that objective, on May 19, 1967, Utah Fortuna Gold Company acquired all the assets of Thermal, including the patent application on the Storrs Process, described as an auto-air pollution device that converted coal into coke.

9. Bowman, in return, received a right to royalties on any coke that might ultimately be produced and 330,000 Utah Fortuna Gold Company shares.

10. The corporate name of Utah Fortuna Gold Company was changed to North American Research and Development Corporation (North American) at a June 19, 1967 stockholders' meeting, at which White voted proxies for 1,500,000 of the total of 1,800,000 shares outstanding. White was then elected chairman of North American's board of directors; Louis Dillman, a Canadian friend of White, its



president; and Bowman, its secretary-treasurer.

The "Progress Report"

11. White and Dillman, with a professional writer not named as a defendant, then prepared a "sales brochure in the form of a 'Progress Report' pertaining to North American," which was intended as, and in fact was, one of the principal means used to effect distribution into the United States of approximately 200,000 shares held in Toronto accounts.

12. Although the number of minority shareholders prior to White's acquisition varied between about fifty and eighty, which number was necessarily reduced by the time that the White-Freeman-Naft trio had acquired control of 96.8% of the outstanding shares, 1,000 copies of the report were printed and between 200 and 250 were or caused to be distributed by White, Bowman and North American to stock brokers, registered representatives and other prospective purchasers.

13. The Progress Report was materially false and misleading. It painted a glowing picture of a

pollution-free fuel market in which the Storrs Process would play a leading part. The report, among other matters, stated that independent tests and appraisals by leading engineering firms indicated a tremendous sales potential; that North American envisaged processing plants strategically located in or near coal mining centers directly owned by the company or by others under a lease or royalty agreement. The rosy picture was furthered with statements that a large market exists in the western United States, with the prospect that a similar demand could be developed throughout the United States and other highly industrialized countries. The report conveyed the impression, contrary to the fact, that North American had the productive capacity and the financial resources to satisfy current as well as potential market demands and to carry out an extensive program of expansion of processing plants in or near coal mining centers.

The report also conveyed the false impression that the plant was in operation in July 1967, when it was distributed to various persons in the United States. Thus, it contains photographs of various units of the plant and process, some of which are entitled "Scenes of Pilot Plant."



with men working at the machinery, with the implication of an ongoing operation and current activity. The fact is that the pilot plant had not been operated since 1954 and the economic practicality of reopening the plant required further study.

There were other misleading statements in the report. Thus, as to the statement that other processing plants would be established around coal mining centers either owned by the company or by others under a lease or royalty agreement, already referred to, the company had no intent to own any of such allegedly contemplated processing plants. White testified to this effect -- indeed North American was without the financial resources to undertake such ownership, which involved a capital cost of approximately \$450,000 per plant. When the report was disseminated, North American had less than \$50,000 available, of which \$30,000 would be required to put the pilot plant in operation.

The report suggested that the commercial feasibility of the Storrs Process had been demonstrated. It referred to "Previously conducted feasibility studies

. . ." which "indicated that a profitable operation can be anticipated," and suggested that immediate and further tests shall serve to "verify the commercial value of the process." Thus, it conveyed the impression of a profitable operation with verification being in the nature of a pro forma review. White, however, testified that the very first problem to be faced was the question of the feasibility itself.

The defendants' own witness, Charles S. Davis, a consulting engineer, who investigated the plant in May 1967, testified that a feasibility study would take about thirty to sixty days actually running the pilot plant, and only after \$30,000 was spent to put it "back into first class operating condition." The Lummus Company recommended a thirty-day trial to determine the feasibility of the process.

The failure of the report to disclose that feasibility studies were required which would take some time before a determination could be made that the plant could be economically operated was a material omission.

Other respects in which the report is misleading and abounds in "ambiguities" and "half truths" are set forth (14) in the opinion of the Court of Appeals.

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(14) SEC v. North American Research & Dev. Corp., 424 F.2d 63, 75-77 (2d Cir. 1970).



Individual Promotional Efforts of Certain Defendants

14. Meanwhile, White, Freeman and Naft had begun promoting the stock to broker-dealers in the United States with a view toward its introduction in the over-the-counter market at the end of June 1967. For example, White and Freeman flew to Los Angeles after the June 19 stockholders' meeting and, with no financial data or other detailed information available, resorted to touting tactics for the benefit of officers and registered representatives of at least two brokerage firms, Eache & Co. and Bateman Eichler, Hill Richards, Inc. They represented that they believed that the company had great prospects. To dramatize the Storrs Process and their purported estimates of the large potential market for anti-pollution coke they displayed a sample of coke, the clear implication being that it had been successfully produced at the pilot plant, although the plant had not operated since 1964.

15. They advised that trading in the shares from the Cannon firm in Toronto would commence in the Los Angeles market on about the 26th or 27th of June

"around the \$3 range or below" and they made available copies of the "Progress Report." In their efforts to promote the stock, Freeman opined the stock might go up to \$100, but White suggested they were going to take it slowly up to \$10; that it was bad for a stock to move too fast and that if it went up to 100 that it would attract the attention of the SEC.

16. White also discussed North American with at least two more brokers and actually placed orders for North American stock for at least two persons.

Alfred Blumberg

17. The aid of others was also enlisted in the scheme of distribution. Blumberg was one such person. He was no stranger to the securities industry. He was president of S. J. Rothman & Co., an inactive New York City brokerage firm, of which he was a principal stockholder and which was registered as a broker-dealer with the Commission from August 1967 to June 1968. He was employed as a registered representative from October 1956 to the spring of 1960 and again in 1962, 1965, 1966 and 1967. He has been a finder and has been so recognized on



prospectuses issued in connection with the public sale of securities.

18. Blumberg recommended to and caused the purchase of North American shares by a number of his customers and in instances failed to disclose material facts which he knew, or misrepresented facts, or failed to give complete information as to North American; he solicited the purchase of North American shares and distributed the Progress Report and thereby caused purchases of unregistered shares; he played an active and knowing role in aiding and abetting the principals in the distribution of unregistered stock, as hereinafter indicated.

19. Blumberg and White first discussed North American in Canada. In the early part of June 1967, Blumberg and Morris M. Cooper (Cooper) met White and Freeman in Toronto, Canada; the same four and Naft met in Toronto about two weeks later when Blumberg told White that if White was "going into the pollution deal as a public company he would like to see it"; this meeting occurred shortly before the North American stock was to trade. Blumberg met White a third time, in the company

of Cooper, when White showed them a copy of "The Lummus Report," which concerned the extraction of sulphur from coal through heating.

20. In the latter part of June, 1967, Blumberg recommended and touted North American among his customers, friends and associates. At least a score of persons purchased North American shares through the activities of Blumberg. The shares were purchased by such persons upon his recommendation through Dunhill Securities Corp. (Dunhill), a broker-dealer doing business in New York City; other purchases of North American shares were made through Dunhill by Blumberg or persons whose discretionary accounts he handled, or for whom he had authority to act. His purpose in recommending that his customers use the services of Dunhill was to keep the continuity of his clientele until he became established in the securities industry, since he intended to make his living from commissions. All the facts and circumstances surrounding his activities warrant a finding that Blumberg was instrumental in linking Dunhill with its Canadian sources of supply of North American securities.



21. Blumberg had discretion over or purchased for the accounts of Donald Bachman, Diam Trading, S. J. Rothman, Stanley Snyder and Edwin Hedlinger, and handled the account of his mother, to whom he recommended the purchase of North American shares.

22. Based upon Blumberg's recommendation, the following persons purchased North American: Myron Thaler, Linda Winkler, Stephen Downey, Milton Jacobs, Muriel Begleiter, Lisa Greenberg, Peter Diaz, Bernard Bornbaum, Adele Spurio, Louisa Corby, Max Jacob and Sheppard Spies.

23. Solomon Schneider (Schneider), who believed Blumberg was in the securities business, upon his recommending North American, purchased 300 shares. Schneider wanted to sell the stock, but didn't at the suggestion of Blumberg, who told him that General Electric was going to build a plant for North American which would make it more feasible, and that the North American stock should be a good investment.

24. Murray Cousins, who believed Blumberg was in the brokerage business, purchased 300 shares of North American, relying on the recommendation of Blumberg.

Blumberg represented to Cousins that North American was dealing in a fuel to eliminate air pollution and also stated the stock was a good stock, a good buy, and that it would go up. Blumberg gave Cousins the impression that he, Blumberg, was connected with persons involved in North American and that he was a member of the group.

25. Joseph Corby purchased 500 North American shares on Blumberg's recommendation. Blumberg told Corby that North American had a pilot plant and a process for extracting pollutants from coal; that the process had been proven, and that North American had contracts pending with utility companies who use coke in generating steam and electricity. Corby relied upon Blumberg, in part, because his background in the securities industry qualified him to "analyze a stock thoroughly."

Present Activities of White, North American,  
Blumberg and Bowman

26. White is associated with several public companies.

27. White is an officer or director of several public companies in addition to North American. He is



president of Illumino Devices. Its shares are traded in the United States, and it issues periodic reports to its shareholders.

28. He is also president of Woege Uranium, Jandon Mines, and Larenim Securities, all located in Canada.

29. Larenim Securities was an underwriter of securities in Toronto. Based upon the North American violations, its license as an underwriter was revoked.

30. White has security brokerage accounts with one broker in the United States and five brokers in Canada. The total value of White's portfolio is half a million dollars.

31. When the market was doing better, White was a "very big trader."

32. As already noted, despite findings by the United States District Court and the United States Court of Appeals to the contrary, White continues to maintain that the Progress Report is "absolutely a fact and the truth." It has not been revised or rescinded. Also he



continues to maintain that the shares of North American need not be registered.

33. White has caused many progress reports to be issued for other companies he owns or with which he is associated.

34. Presently, North American is not an operating company. It is however, attempting to revive itself, and has negotiated a contract for a feasibility study of the Storrs Process.

35. White continues to own one million North American shares.

36. Blumberg has been suspended by the Commission from association with any broker or dealer, for sixty days, a suspension that was imposed as a result of the violations that are the basis for this injunction.

37. Nevertheless, Blumberg did not think that it deserved the time or the effort to research North American at the time he decided to buy for himself and others, and would so conduct himself if faced with a similar situation again.

38. Ned J. Bowman Company was registered as a broker-dealer from March 30, 1954 to May 16, 1960, and the defendant Bowman was vice president and a director of Ned J. Bowman Company. He owned 10% or more of the equity securities of the said firm.

On April 18, 1955, in an action commenced by the Commission in the United States District Court for the District of Utah, Ned J. Bowman Company was enjoined from further violations of section 5 of the Securities Act in connection with the sale of Lavender Uranium Corp. stock.

After the institution of administrative proceedings, the Commission, on May 16, 1960, revoked the registration of Ned J. Bowman Company with the Commission. There, the Commission found that Bowman violated sections 5 and 17 of the Securities Act and sections 10(b) and 15(c)(1) of the Exchange Act in connection with offers and sales of Lavender Uranium Corp. stock.

In administrative proceedings instituted by the Commission against Jonathan & Co., Inc., formerly registered as a broker-dealer, the Commission, on June 30, 1949, revoked the registration of Jonathan & Co. on



the basis, among other things, that it had not been appropriately disclosed in filings with the Commission that a branch office of the firm had been sold to four persons who were nominees of Bowman.

On January 26, 1965, a Judgment of Permanent Injunction was entered in the United States District Court for the District of Utah in an action commenced by the Commission enjoining Bowman and Thermal Dynamics Corp. (Thermal) from further violations of sections 5 and 17 of the Securities Act, in connection with the sale of Thermal stock. Thermal formerly owned the rights in the United States to the Storrs coking process, which, as mentioned above, were transferred to North American. Misrepresentations respecting this process were the principal means by which the defendants illegally distributed North American stock to investors in this country.

39. Since the filing of this action to enjoin K. Ralph Bowman from any further violations of the registration and anti-fraud provisions of the federal securities laws Bowman has continued to violate those laws. On June 6, 1969, Judge Thomas F. Murphy of the United States District Court for the Southern District of New York issued



a preliminary injunction enjoining Bowman from further violation of the registration provisions of the Securities Act in the offer and sale of the common stock of the Dumont Corporation.

On November 14, 1969, after trial, Judge A. Sherman Christensen of the United States District Court for the District of Utah issued a permanent injunction which enjoined Bowman from violating the registration requirements of the Securities Act with respect to the securities of the Top Notch Uranium & Mining Corporation or any other securities.

40. Blumberg sold 500 North American shares, and realized a profit on those sales.

41. No registration statement has ever been filed with the Commission as to the securities of North American.

42. The means and instrumentalities of inter-state commerce or of the mails or means or instruments of transportation or communication in interstate commerce were used in connection with the activities described above.

### CONCLUSIONS OF LAW

1. The Court has jurisdiction over the defendants and matters alleged as violations of law herein.

2. Neither the securities nor the transactions alleged herein to be in violation of section 5 of the Securities Act were exempt under either section 3 or 4 of that Act.

3. From on or about April 27, 1967, White, Blumberg and Bowman directly and indirectly, singly and in concert, violated and aided and abetted others in the violations of sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, 15 U.S.C. 77e(a), 77e(c), and 77q(a), section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b) and Rule 10b-5 thereunder, 17 CFR 240.10b-5 in that they:

- (a) Made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell through the use or medium of any prospectus or otherwise or to carry or cause to be carried securities of North American Research and Development Corporation,



Before a registration statement was filed with the Securities and Exchange Commission as to such securities;

- (b) Made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell such securities through the use or medium of a prospectus or otherwise, before a registration statement was in effect with the Securities and Exchange Commission as to such securities;
- (c) Carried such securities or caused them to be carried through the mails or in interstate commerce by the means or instruments of transportation for the purpose of sale or delivery after sale, before a registration statement was in effect with the Securities and Exchange Commission as to such securities;
- (d) Employed devices, schemes or artifices to defraud, engaged in acts, practices or courses of business which operated or would operate as a fraud and decoit upon purchasers and prospective purchasers, made untrue statements of a




material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, misleading in connection with the purchase, offer or sale of such securities while making use of the means or instrumentality of interstate commerce or of the mails, or of the means or instruments of transportation or communication in interstate commerce.

4. Permanent injunctive relief is essential to protect the public against these and other illegal acts and transactions of White, North American, Blumberg and Bowman with respect to the securities of North American or any other securities in the future. Unless so enjoined, there is reasonable likelihood that these defendants might continue to engage in violations of the securities laws.

Judgment may be entered accordingly.

Dated: New York, N. Y.  
March 8, 1974

  
United States District Judge

# RESOURCES AND TRAINING

UPON the annexed motion and upon the annexed affidavit of Leonard R. Glass, Esquire, co-counsel for defendants, North American Research and Development Corporation and Edward Philip, and counsel for Lewis Dillman and K. Ralph Bowman, the complaint and answer herein and the Notice of Motion and exhibits dated November 8, 1967, it is

ORDERED, that the plaintiff, Securities and Exchange Commission, show cause at the Motion Term of this Court to be held in Room 506 of the United States District Courthouse for the Southern District of New York, Foley Square, Borough of Manhattan, City and State of New York, on the 16th day of November, 1967, at 10:00 a.m. in the forenoon of that day, or as soon thereafter as counsel can be heard;

40a



Dated: November 14, 1967 .

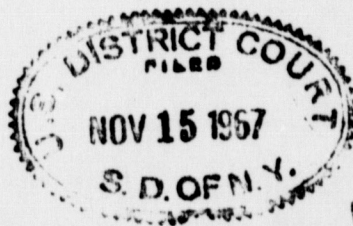
U. S. District Judge

I application for this order to show cause is denied. If moving defendants meet the relief mentioned in paragraph "10" of the annexed affidavit, they may apply first on the return date of the ~~notice of motion~~ <sup>for writ of habeas corpus</sup>. The Commission approved by the ~~applicant~~.

As ordered.

November 14<sup>th</sup> 1967

1872





SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

NORTH AMERICAN RESEARCH AND  
DEVELOPMENT CORP., et al

Defendants.

REPLY AFFIDAVIT

Civil Action No.  
3724/67

STATE OF NEW YORK

COUNTY OF NEW YORK

} ss.:

LEONARD R. GLASS, being duly sworn, deposes and says:

1. I am a member of the firm of Glass & Greenberg of 660 Madison Avenue, New York City, New York. Edgar H. Brenner of Arnold & Porter, of 1229 19th Street, N.W., Washington, D.C., and I are co-counsel for defendants, North American Research and Development Corporation and Edward White, the chief executive officer of the defendant, North American Research and Development Corporation. I also represent defendants Lewis Dillman and K. Ralph Bowman who are officers and directors of the defendant, North American Research and Development Corporation.

2. This affidavit is submitted in reply to plaintiff's memorandum in opposition to defendants' cross-motion to consolidate the hearing on plaintiff's motion for a Permanent Injunction, to set the trial on both subjects for the January 1968 Term of this Court and to permit pretrial discovery on an expedited basis.

3. The plaintiff, Securities and Exchange Commission has raised two principal defenses in opposition to defendant's cross-motion. The Commission first contends that "it has made a clear showing that its motion for a preliminary injunction should be granted which the defendants have not controverted." (Emphasis supplied.

4. Plaintiff's first contention that defendants have not controverted the Commission's allegations of wrong-doing by defendants is not supported by the pleadings on file in this action. The defendant, North American Research and Development Corporation and its defendant officers and directors, Messrs. White, Dillon and Bowman have filed answers in this action in which they have denied each and every material allegation of plaintiff's complaint charging them with wrong-doing in the alleged offer and sale of unregistered securities of the defendant corporation. In addition, these defendants have affirmatively pleaded that they did not engage in the public sale or distribution of any shares of the defendant corporation owned by them.

5. The Commission's Memorandum also asserts that the affidavit of Edward C. Jaegerman together with the voluminous affidavits attached thereto and the affidavit of Miss Connors filed in support of the Commission's motion for a preliminary injunction more than establishes the necessary showing for a preliminary injunction.

6. A fair reading of plaintiff's principal affidavit in support of its motion for a preliminary injunction can only lead to a determination that statements which the Commission refers to as "facts" are in reality conclusions and inferences unsupported by facts.

7. The Commission on Page 5 of its Memorandum in Opposition to Defendants' Cross Motion states:

"It is also notable that nearly every person who participated in the distribution is a friend or at least well known to White."

It is respectfully submitted that guilt by association is not a substitute for hard facts which are demonstrably lacking in the Commission's affidavits. Reliance upon unsupported statements of a Commission Investigator are no substitute for a requisite showing of "facts" upon which this Court may make a determination.



8. The plaintiff, Securities and Exchange Commission urges in opposition to defendants' cross motion that counsel for the defendants have been engaged in lengthy conferences and negotiations with members of the staff of the Securities and Exchange Commission to lift the suspension in trading. It should be noted that to date the trading ban has not been lifted and notwithstanding any action by this Court with respect to the pending motions, the Commission may unilaterally continue the trading ban indefinitely.

9. The attempts of the Commission staff to urge upon this Court the public policy reasons for the lifting of the trading ban are inconsistent with their actions in the instant case. The New York Regional Office has been engaged in a consistent pattern of conduct in advising brokers to cancel transactions in the purchase and sale of North American's common stock; advising customers to obtain the return of their purchase price and in some instances asserting that none of the stock is free for trading. It is for this reason and not the general public policy reasons set forth in plaintiff's Memorandum that the parties should be entitled to a speedy court determination of the issues raised not only in the motion for temporary injunction but in plaintiff's prayer for a permanent injunction.'

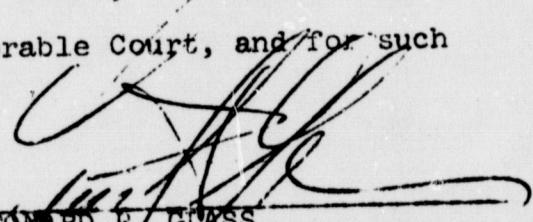
10. In order for the financial community to properly advise their customers, a final adjudication of the issues raised in this action should be speedily determined by this Court. Defense counsel in order to expedite the pretrial proceedings herein has already served the Commission with a notice to depose Edward C. Jaegerman the member of the staff whose affidavit was submitted in support of the motion for preliminary injunction. This examination is scheduled

for December 6, 1967. In addition, the defendants have also served the plaintiff with a demand for interrogatories, and the Commission has requested an extension of time in which to answer these interrogatories. Defendants have also served notices to examine certain other parties.

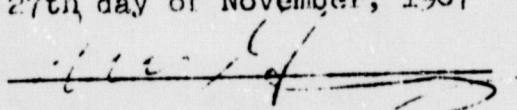
11. It is respectfully submitted that the interests of the defendant corporation, its officers, its stockholders and the members of the financial community would best be served by a consolidation of the trial and the motion for preliminary injunction and expediting of all pretrial procedures so that the respective rights of all parties concerned can be speedily adjudicated.

12. In any event, my clients intend to vigorously oppose plaintiff's motion for preliminary relief and in order to properly prepare for a hearing on said motion, it will be necessary to take the depositions already noticed and to secure the answers to the interrogatories already served. On behalf of my clients, I have moved with utmost speed and diligence under the circumstances to notice depositions and serve interrogatories.

WHEREFORE, your deponent respectfully requests that plaintiff's motion for a preliminary injunction be consolidated with plaintiff's prayer for a permanent injunction that a trial date be set for the January Term of this Court, and that an expedited discovery proceeding be set by this Honorable Court, and for such other and further relief as may be just.

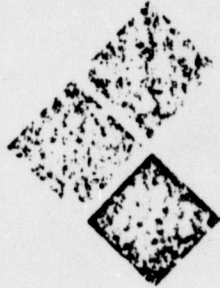
  
LEONARD R. GLASS

Sworn to before me this  
27th day of November, 1967



HANDLED BY  
NOV 29 1967  
CLERK OF COURT  
1000 L. J. B. B. B.





March 24, 1974.

Hon. E. Weinfeld,  
United States District Court  
Southern District of New York  
NEW YORK, NEW YORK 10007.

Dear Judge Weinfeld,

RE: 67 Civil 3724.

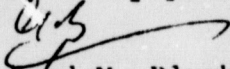
During the Trial of S.E.C. vs. North American Research & Development, I represented myself. I am engaged in research for an appeal of your decision. In a Supplemental Trial Memorandum, that I presented to the Court, September 19, 1973 I questioned the where-abouts of the Exhibits in the above matter.

I have been to the record room of the District Court, and have examined the files. I have failed to find the exhibits to the Hearing before Judge Mansfield. In the past six years I have looked for these exhibits in the preparation of various matters before the Court. In any event, They have not been available to me in preparation for prior proceedings. I mention this as I have gone through the process of the case, and now am forced to request your assistance in this matter.

Since you have rendered your decision on March 8th, 1974, I once again reviewed the four folders in the Record Room. Again, I have not found these exhibits. The Clerk suggests that I write to you, as you might know where they are. In addition, it is suggested that I contact all parties in the case. I am in the process of doing that, and I enclose a copy of a letter I wrote to the SEC.

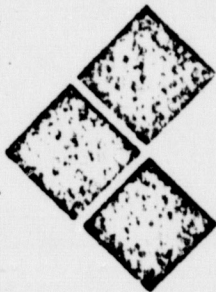
I shall call the attorneys for the defendants, as suggested. As the Court has been helpful in the past in this matter, I hope you will be able to aid me in the above matter.

Very truly yours,



Alfred N. Blumberg  
Suite 737  
150 5th Avenue,  
New York, New York 10011

Enclosed: Cc. Letter to R.M. Dietz, Esq. SEC 3/24/74



March 24, 1974.

Roger M. Dietz, Esq.,  
Securities & Exchange Commission,  
26 Federal Plaza,  
New York, New York 10007.

Dear Mr. Dietz,

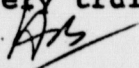
I may try to prepare my appeal to the decision of Judge Weinfeld, in the case of S.E.C. vs. North American Research & Development Corp., et al.; The case is carried as 67 Civil 3724.

I am sure that you are aware that I have visited, and inspected the file of the case during the last six years. In my recent visit, I requested the exhibits which were supplied by the SEC, in the Hearings before Judge Mansfield. I was informed that the SEC has these exhibits.

Therefore, I request that you deliver to me, a list of those exhibits, and the dates when the SEC has received them from the District Court, during the last six years. I would like all the exhibits to be made available so that I might make copies for my use.

I hope that you will make this information available to me, as I understand that I have a limited period for my appeal. In any event an immediate answer is necessary.

Very truly yours,

  
Alfred Blumberg  
Suite 737  
150 5th Avenue  
New York, New York 10011.

ANB/ms





UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
REGIONAL OFFICE  
26 FEDERAL PLAZA  
NEW YORK, N.Y. 10007

IN REPLYING PLEASE QUOTE

March 29, 1974

Mr. Alfred Blumberg  
Suite 737  
150 Fifth Avenue  
New York, N. Y. 10011

Re: North American Research & Development  
Corporation, et al. 67 Civil 3724

Dear Mr. Blumberg:

This is to acknowledge receipt of your letter of March 24, 1974. Since that time I have requested the court files in the above matter to be examined and have been told that the exhibits which you requested are not located there. I am presently examining the files of this office to locate the exhibits from the preliminary injunction.

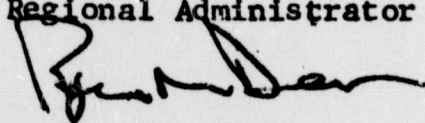
At the request of the Department of Justice, I will be out of town during part of next week. When I return I will be in touch with you.

Please understand that you need not have the exhibits at this time to file a notice of appeal. I would suggest that if you intend to appeal, that you do file such a notice as soon as possible.

Very truly yours,

WILLIAM D. MORAN  
Regional Administrator

By:

  
Roger M. Deitz  
Special Counsel

MEMO ENCLOSED

April 12, 1974

Hon. Edward Weinfeld,  
District Court Justice  
United States Court House  
Foley Square,  
New York, New York 10007

Re: 67 Civil 3724

Dear Judge Weinfeld,

On March 25th, I personally delivered to your office a letter, dated March 24th, where I requested your assistance in locating the exhibits of the above case. This letter was written to you after I had done an extensive search of the files located at the District Court, and used the time and effort of employee's in cross checking the docket records. In addition I wrote a letter to Mr. Roger Deitz, Counsel of the S.E.C.; a copy of this letter was given to your clerk on March 25th..

Mr. Deitz has informed me by letter, dated March 29th, and by aphone call April 10th, that he has searched the records of the S.E.C.'s New York Office, and the District Court, along with your office. He has not been able to locate these exhibits.

I have informed your Court at the trial, and in my memo dated September 19, 1973 that exhibits were unavailable.

On page 6 of your decision in the above case, you have stated that you have read and studied the voluminous transcript of that hearing. I assume that included the numerous exhibits cited above in the preceding sentence of your decision.

Therefore, I have to assume you had the exhibits at sometime during the trial, and the time you rendered the decision. Would you therefore inform me of each exhibit you considered in your decision, and where they might be presently.

A prompt reply would be most appreciated from your office.

Very truly yours,

*Alfred Blumberg*

Alfred Blumberg,  
150 5th Ave Suite 737  
New York, New York 10011

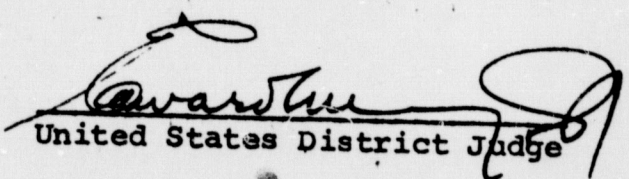
Copy: Deitz letter to AS 5/29/74  
49a



67 Civil 3724

The defendant Blumberg, under date of April 12, 1974, inquired as to the reference on page 6 of the Court's opinion to its study of the voluminous record and exhibits of the hearing on the motion for preliminary injunctive relief. This will be found in the appendix on appeal and exhibit volume contained in the United States Court of Appeals Record, Volume 32246 to 32249.

Dated: New York, N. Y.  
April 19, 1974

  
United States District Judge

1  
2 in fact, Mr. Blumberg has testified that he bought the first  
3 block of shares to come into the United States at \$2 through  
4 another broker-dealer who is also enjoined in this case,  
5 permanently enjoined.

6 The stock opened for trading at \$2. On the 27th  
7 of June, 1967, exactly six years ago. It quickly shot up to  
8 \$7 by July 20th when the SEC stepped in and stopped trading.  
9 The trading was halted until the middle of 1968, after which  
10 time Judge Mansfield had heard the preliminary injunction  
11 and returned his decision. It was felt at that time that  
12 there was enough material in the hands of the public to remove  
13 the trading ban and the ban was removed.

14 In connection with the skyrocketing price from  
15 \$2 to \$7, Mr. White prepared a progress report, which is  
16 Commission Exhibit 16, the record below. I will hand up a  
17 photocopy of this for your Honor.

18 It is this document that the Commission alleged  
19 was false and misleading in that it alleged to state several  
20 material facts. The facts it did state were not accurate.  
21 The Commission's complaint cites these in great detail.

22 Mr. Blumberg had prior to the 27th of June been  
23 in contact with Mr. White and some of his associates who were  
24 also permanently enjoined in this case. He knew about North  
25 American and he knew that the company was ready to begin



1 A I reside at 360 East 72nd Street, New York City.

2 Q Do you also have a residence in Canada?

3 A What do you mean by "residence"?

4 Q Do you have a home in Canada?

5 A My residence is 360 East 72nd Street.

6 Q Do you have any other place where you have  
7 household effects and an apartment, possibly?

8 A There is an apartment maintained in Toronto.

9 Q Is it maintained for you?

10 A Is it maintained for me or other people that I  
11 invite? It is a business apartment.

12 Q In whose name is that apartment leased?

13 A Edward White.

14 Q Where is it located, Mr. White?

15 A It is located in Toronto.

16 Q Where in Toronto?

17 A 400 Walmer Road.

18 Q What business has access to this apartment?

19 A I do.

20 Q I thought you said it was a business apartment.

21 A That's my business apartment, where I invite  
22 people up there for business and other activities. My  
23 residence is in New York.

24 Q What sort of business are you in?

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A I am in a number of businesses, Mr. Dietz.

Q Tell the Court what they are, please.

A I am in plastics, in machines, electrical, research, and that's it.

Q Let's take them one by one.

What is the nature of your involvement with plastics?

A I have an invention in a plastic pump.

Q Are you associated with any company involved in plastics?

A Am I? Yes.

Q What company?

A Sommerville Plastics, NAPA Plastics, NAPA Industries. Sommerville Plastics is in Toronto. NAPA is a Delaware corporation.

Q Is Sommerville a public company?

A It is.

Mr. Dietz, I don't own or control the company. I just do business with it.

What is the relevancy of these questions? I must ask you this.

Q Are you an officer or director of Sommerville Plastics?

A No, I am not.



2 Q Are you an officer or director of NAPA?

3 A Yes, I am.

4 Q What is your position with NAPA?

5 A President.

6 Q Is NAPA a public company?

7 A No, it is not.

8 Q How many shareholders does it have?

9 A Three or four.

10 Q Who are the other shareholders?

11 A My wife and children.

12 Q What is your involvement with machines?

13 A I make hot dog machines, Mr. Dietz.

14 Q Is this done through a corporation?

15 A The patents are owned by me and other people and  
16 it is done through many corporations.

17 Q Are you associated --

18 A Some are public and some not.

19 Q Are you associated with any of these corporations  
20 as an officer or director?

21 A Publicly or not publicly?

22 Q Either, Mr. White.

23 A I am associated with NAPA.

24 Q Are you associated with any other corporations  
25 involved in machinery?

2 A Associated in which manner?

3 Q As an officer or director.

4 A No.

5 Q How about as a shareholder?

6 A I might be.

7 Q Don't you know, Mr. White?

8 A I don't know. I am associated with a lot of  
9 companies. If you will be specific I will tell you.

10 Q When you say "associated" --

11 A You are going on a broad range here into a whole  
12 world. Okay. If we can get specifically what you are  
13 talking about in the companies that I am talking about I will  
14 be very happy to tell you. I am associated with many companies.

15 Q Are you an officer or director of any public  
16 company?

17 A Yes.

18 Q Would you name the companies and indicate the  
19 nature of your association.

20 A I am president of Illumino Devices. Does this  
21 mean an investigation, Mr. Dietz, into the company as part of  
22 your harassment?

23 Q Mr. White, perhaps I should advise you that you  
24 have a right not to answer any questions which I ask which you  
25 feel may tend to incriminate you or subject you to fine,



1  
2 A Could be. A lot of people say, "What do you think  
3 of this stock here," and if I like it I say, "I like it," and  
4 if I don't like it I say, "I don't like it."

5 Q Have you ever been approached by individuals in  
6 the last several years who have asked your advice concerning  
7 going public with a company?

8 A I have nothing to do with going public of a  
9 company. I have no interest in discussing the people of  
10 taking them public. I have not got an underwriter's license.  
11 I have no beneficial interest in this type of financial advice.

12 Q Have you ever acted as a finder?

13 A No.

14 Q Have people approached you to solicit you --

15 A They solicit me. People solicit me to get into  
16 deals with them but I have one standard answer. Until the  
17 North American case is finished I am not going to get involved  
18 in any other situations because if the North American case is  
19 not concluded favorably in my point then I will not do any  
20 business in the United States, because I am not going to be  
21 continually harassed.

22 Q Do you own any securities, Mr. White?

23 A Yes.

24 Q Do you have security accounts here in the United  
25 States?

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pgrm

White-direct

73

A One.

Q What broker?

A E. F. Hutton.

Q Do you have security accounts in Canada?

A Yes.

Q How many brokers?

A Maybe five.

Q Do you buy and sell United States stocks in  
Canada?

A Maybe once in a while. Not as a practice.

Q What is the total value of the securities that  
you own, Mr. White?

A I don't think that is relevant.

THE COURT: The objection is overruled.

MR. SCHREIBERG: Answer it.

A (Continuing) Maybe half a million.

Q Half a million dollars?

A Yes.

Q Does your wife own any securities?

MR. SCHREIBERG: I object to that.

THE COURT: Objection sustained.

Q Do you control any security accounts owned by your  
wife?

MR. SCHREIBERG: I object to that.

57a



THE COURT: I will allow that.

A What?

Q Do you control any of your wife's --

A What do you mean by "control"?

Q Do you exercise purchase and sale?

A Not that I know of.

Q Have you ever entered a purchase or sale order for a security owned by your wife?

A Did I ever? She handles her own accounts.

Q Do you advise her on the way she handles her accounts?

A If she asks for it.

Q Does she?

A At times.

MR. SCHREIBER: Is Mr. Dietz going to prove violations of the statutes by having conversations of this witness with his wife?

MR. DIETZ: Of course not.

THE COURT: The witness has already answered.

Q Would you say that you are a very large trader of stocks?

A Recently? No.

Q When the market was doing better.

A No. I used to be a very big trader.

responsibility to the banks for a million and a half dollars.

When there is a leak from the Security Commission by Mr. Yaegerman, who was the chief, who testified here to a newspaper in leaking Mr. Donald Chipman and Mr. Amira as a director in this case, the banks immediately called in their loans, and I felt because these people were friends of mine that I should bear the complete responsibility of anything that was written for this corporation. Even though they were not of my doing I still accept the responsibility, such as the progress report. The progress report was not made by me. The pictures in there were not selected by me. But the essence of the progress report, the essence inside that progress report, was scrutinized by me and it is absolutely a fact and the truth as it was then as it is today; secondly, all of this progress report was never used as a sales implement. It was strictly as a progress report and every word in there is a fact, and just because the word "operating" which has been the whole thing here -- instead of being "operable". we used the word "operating," which you people went through with a fine tooth comb, told to me by Mr. Snow and other members of the investigation team 17 times in order to make some type of a case -- the only case you come up with is an omission. An omission of what?

Q As I understand it, you continue to deny the



allegations against you, is that so?

A Don't be cute, Mr. Dietz. You know that you, yourself, have asked me to take a consent not once, not twice, but ten times, and I have told you 40,000 times, and told everybody in the Commission, there is no way that you are going to get a consent from me on anything that I have never done and that you can't prove. Okay. Let's stand from that point on. I don't spend my money indiscriminately and waste six years of my life, and I don't care how small this case is, the agony of justice, the thought of this here, because you sit in here, and other people use this as a training ground, you are not going to continue with these snippy remarks in this courtroom.

Of course I deny all allegations here.

Q Have you prepared progress reports for any of your other companies?

A Do I prepare them?

Q Have you caused them to be issued?

A Yes, I have. Many of them.

Q When was the most recent one?

A I don't remember.

Q Did you at any time ever cause a registration statement to be filed with the Securities & Exchange Commission concerning North American Research and Development

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Corporation?

A That is a good question, Mr. Dietz. Mr. Dietz, how many times have I asked you and other members of the Security Commission that I would register this company, register this company to conform with the Securities Acts even though this company did not need one and does not need one now. This company is exempt under the 3(a) Act because this is a grandfather's clause; second of all, this company never violated the Securities Act based on the point that it never sold a share of stock to the public. So there is no need of a registration statement. Yet I went to you and other members and I have agreed to register a company that did not have to be registered. You people turned it down because you were only interested in the consent of Mr. White and nothing else. You had no interest in the public, not one bit.

Q Have you ever filed a registration --

THE COURT: The question was, which you have not answered despite your long statement, did you ever file or cause to be filed a registration statement of the North American Research and Development Corporation?

THE WITNESS: No, because North American doesn't need it.

THE COURT: I believe the Court has decided otherwise.



1 A No. Absolutely not.

2 Q To your knowledge, has any other corporate officer  
3 been authorized to distribute this report, or any other  
4 information?  
5

6 A They are absolutely forbidden by me to even  
7 discuss it with anybody in the financial world.

8 Q Have you or any other officers of the corporation  
9 to your knowledge discussed the financial or business pros-  
10 pects of the company with any brokerage firms?

11 A Not to my knowledge.

12 MR. DIETZ: Your Honor, during what time is this?

13 THE WITNESS: Since the temporary injunction.

14 MR. HOCKERT: All my questions are directed to  
15 all times subsequent to the issuance of the temporary  
16 injunction.

17 A (Continuing) The only business we carried on was  
18 to converse in a normal manner of business with companies  
19 that are interested in the process itself.

20 Q These transactions then, I presume, had nothing  
21 to do with the stock of the company or the trading of the  
22 stock of the company.

23 A The only discussion in stock that was ever done  
24 was held by me and the Securities Commission.

25 MR. HOCKERT: Thank you.

## FURTHER REDIRECT EXAMINATION

BY MR. DIETZ:

Q Since the injunction, during the time that Mr. Hockert was referring to, had the company or you made any efforts to rescind the report?

A Why should I do that?

Q To recover copies of the report.

A For what reason? I would like to know what reason to rescind it? I have no reason to rescind it. It is truthful and accurate.

Q Have you ever --

A I still think it is truthful and accurate.

Q Have you ever made a report to your shareholders advising them that the company and you and others have been enjoined?

A No, because there was a public announcement on this here and you, yourself, the SEC, has a digest and have circulated it that the stock resumed trading on April 1st.

THE WITNESS: By the way, let the record show that the company was in the same position, unregistered, without a financial report, and was allowed to trade not being registered and not being with a financial report. So the Securities Commission allowed this company, which they got a temporary injunction on, all right, which was charged with fraud, was



1 charged without having a financial statement, was suspended  
2 for these reasons, and not being a registered company, the  
3 Security Commission turns around on April 1st and directs  
4 that this stock be allowed to be traded without any material  
5 disseminated to the public by the company.  
6

7 THE COURT: That concludes your witness' examina-  
8 tion.

9 We will take our recess now until 2 o'clock.

10 MR. DIETZ: Your Honor, the Commission has no  
11 further witness. We may be able to conclude.

12 THE COURT: We will resume at 2:15.

13 (Luncheon recess.)  
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2 case.

3 In February of 1973 Mr. Dietz sent out a notice  
4 that these people should bring their brokerage statements to  
5 New York City. They scheduled a series of hearings which were  
6 postponed in some legal terminology until a future date. Two  
7 weeks after that Mr. Dietz sent out another letter with regard  
8 to Judge Motley's decision of September, 1972, and that those  
9 people were now enjoined in this action. Those papers were  
10 filed in this court on May 17, 1973 by Mr. Malofsky, but Mr.  
11 Malofsky, appearing here in Mr. Dietz' absence, because Mr.  
12 Dietz was getting married, turned to this Court and said,  
13 "There are people working out a consent right now."

14 I don't recall there ever being a permanent injunc-  
15 tion for not showing up at a deposition.

16 Therefore we found ourselves this morning with  
17 nine absent defendants. Three other defendants to that case  
18 coincidentally happened to be -- I don't know what the term is  
19 because I can't read the shorthand on the sixth floor, but  
20 they were admonished in this case. I don't know what this  
21 means, but they are eliminated and they are not here and have  
22 never been tried.

23 For six years the sword has hung over our heads.

24 Now we come to your Honor. Did Mr. Blumberg  
25 violate the law? It is said he violated the law willfully.



1  
2 I assume I can buy a stock from a broker. It is  
3 the broker's duty to check it out. I did what I thought was  
4 necessary. This stock was traded through the pink sheets and  
5 I bought the stock. By the way, the stock was never delivered  
6 until, probably, at the time of the suspension. There were no  
7 physical certificates yet I have certificates in my possession  
8 made out to a member of the New York City Stock Exchange. I  
9 defy anybody in this room to tell me whether that stock is  
10 good or bad. Nobody is willing to make that statement.

11 It is to be noted that there is a potential of  
12 this process that could mean ten billion dollars over the  
13 next 20 years. This is a public company that is listed on the  
14 New York Stock Exchange, the company that is making the study,  
15 and I have never seen the contract. I recognize the name. It  
16 trades on the New York Stock Exchange. Why would a company  
17 like that do a feasibility study? It is to be noted that the  
18 Government never once sent a man, to my knowledge or anybody  
19 else's knowledge, to walk on the premises of the plant to see  
20 that the pictures that appear in the brochure are real or not.  
21 What difference does it make as to whether a picture was taken  
22 a year or two later or before if there has been no change in  
23 what is there? Is there a plant there? Show us that plant.

18E 24 THE COURT: I don't think anybody questions  
25 whether or not there was a plant there. It was a plant that

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK,  
COUNTY OF RICHMOND ss.:

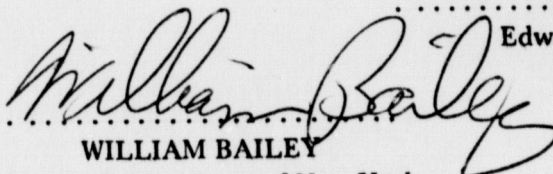
EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 21 day of November, 1974 at No. 26 Federal Plaza and 540 Madison Ave. deponent served the within Appendix

upon William D. Moran and Glass & Greenberg the attys. for SEC & def., res. herein, by delivering a true copy thereof to them personally. Deponent knew the person so served to be the person mentioned and described in said papers as the attys. therefor therein.

Sworn to before me,  
this 21 day of November 1974



Edward Bailey



WILLIAM BAILEY

Notary Public, State of New York  
No. 43-0132945  
Qualified in Richmond County  
Commission Expires March 30, 1973



